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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1948~~ 1949

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No. ~~[illegible]~~ 18

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STANDARD-VACUUM OIL COMPANY,
*Petitioner,*

*against*

THE UNITED STATES,
*Respondent*

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# PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES AND BRIEF IN SUPPORT THEREOF.

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January 28, 1949.

# INDEX


| | Page |
|---|---|
| Petition for Writ of Certiortri to the Court of Claims of the United States | 1 |
| Statement | 2 |
| Statute Involved | 6 |
| Jurisdiction to Review | 7 |
| The Question Presented | 7 |
| Reason Relied On for Allowance of the Writ | 8 |
| Brief in Support of Petition | 9 |
| Opinion of the Court Below | 9 |
| Argument | 9 |
| Conclusion | 17 |


## Table of Cases


| | |
|---|---|
| *Adger* v. *Alston*, 15 Wall. 555 (U. S. 1873) | 11 |
| *Batesville Institute* v. *Kauffman*, 18 Wall. 151 (U. S. 1873) | 11 |
| *Borovitz* v. *American Hard Rubber Co.*, 287 Fed. 368 (N. D. Ohio 1923) | 15 |
| *Braun* v. *Sauerwein*, 10 Wall. 218 (U. S. 1871) | 6, 9, 17 |
| *Brown* v. *Hiatts*, 15 Wall. 177 (U. S. 1873) | 10, 11, 13 |
| *Colorado Fuel & Iron Co.* v. *Industrial Commission*, 216 Pac. 706 (Colo. 1923) | 11, 15 |
| *Farenholtz* v. *Meinshausen*, 168 N. Y. Supp. 869 (1st Dep't, 1918) | 10 |
| *First Nat. Bank* v. *Anglo-Oesterreichische Bank*, 37 F. (2d) 564 (C. C. A. 3d, 1930) | 10 |
| *Hanger* v. *Abbott*, 6 Wall. 532 (U. S. 1867) | 6, 9, 11, 13 |
| *Maryland Casualty Co.* v. *Vidigoj*, 270 S. W. 472 (Ky. 1925) | 10 |
| *Osbourne* v. *United States*, 74 F. Supp. 711 (S.D.N.Y. 1947) | 12, 13 |
| *Osbourne* v. *United States*, 164 F. (2d) 767 (C. C. A. 2d, 1947) | 6 |
| *Ross* v. *Jones*, 22 Wall. 576 (U. S. 1875) | 11 |
| *Sands* v. *N. Y. L. Ins. Co.*, 50 N. Y. 626 (1872) | 10 |

Page

*Siplyak* v. *Davis*, 119 Atl. 745 (Pa. 1923) 14, 15
*Steaua Romana Societate, etc.* v. *Woodman*, 2 F. Supp. 303 (E. D. Pa. 1931), *rev'd on stip. of parties*, 61 F. (2d) 1047 (C. C. A. 3d, 1932) 11
*The Protector*, 9 Wall. 687 (U. S. 1869) 10
*Wirtele* v. *Grand Lodge, A. O. U. W.*, 196 N. W. 510 (Neb. 1923) 10, 11

STATUTES AND MISCELLANEOUS CITATIONS

Section 156 of the Judicial Code, 28 U. S. C. § 262 7
Title 28, United States Code, Sections 1255(1), 1651(a) and 2101(c) 7
*Colombos, Law of Prize*, § 44 11
MS. Department of State, file 855.51/33, the Acting Secretary of State (Polk) to the Belgian Minister (De Cartier), no. 84, July 20, 1918 12
RESTATEMENT, PROPERTY, § 221(1)(d) 10

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1948**

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# No. 532

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STANDARD-VACUUM OIL COMPANY,

*Petitioner,*

*against*

THE UNITED STATES,

*Respondent*

---

## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

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*To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:*

Your petitioner, above named, respectfully prays for a writ of certiorari to the Court of Claims of the United States to review a judgment of that Court (R. 64), entered on November 1, 1948, dismissing, as being barred by the statute of limitations, that part of the Seventh Claim stated in paragraphs 64 to 67 of petitioner's second amended petition (R. 15) and so much of the Fifteenth Claim thereof (R. 27-28) as related to the alleged requisition by respondent of petitioner's petroleum supplies. A certified transcript of the record in this case is furnished herewith in accordance with Rule 41 of the Rules of this Court.

## Statement

This case presents the question whether the running of the statute of limitations, applicable to a claim against the United States cognizable by the Court of Claims in respect of compensation for property taken by the United States for military purposes in time of war, is suspended during the period of enemy occupation of the situs of the property by reason of which the claimant was deprived completely of access to information bearing on the existence of the claim.

Petitioner Standard-Vacuum Oil Company, a Delaware corporation, was at the time of the Japanese invasion of the Philippine Islands in December, 1941, the owner of numerous oil installations located throughout the Philippine Islands. After the declaration of war by the United States upon the Japanese Empire on December 8, 1941, the United States Armed Forces of the Far East (USAFFE) requisitioned for military purposes certain of these installations owned by petitioner, including the petroleum stocks, supplies, buildings and equipment that made up the same. Among the installations so requisitioned were those located at San Fernando, La Union, Philippine Islands, and at La Paz, Iloilo City, Philippine Islands, to which specific reference is made in the Seventh and Fifteenth Claims of petitioner's second amended petition to the Court of Claims.[1] A part of the petroleum stocks, supplies and equipment on hand at the requisitioned installations was used or removed by USAFFE, but as the Japanese forces advanced, USAFFE destroyed the remaining properties.

What occurred thereafter is now history. The USAFFE

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[1] The factual statements made herein are based upon petitioner's second amended petition (R. 1-58) filed June 1, 1948, and verified by affidavit of E. T. Singer, Vice-President of petitioner Standard-Vacuum Oil Company (R. 29).

forces operating under General Douglas MacArthur were driven back and cornered in Bataan Peninsula and Corregidor, and by May of 1942, the Japanese were for all practical purposes in complete control of the Islands, with resistance being maintained only by isolated guerrilla units.

In February of 1945, General MacArthur returned, and the Islands were thereafter liberated. Japan surrendered unconditionally in September of that year, but even at that time there were still pockets of Japanese resistance throughout the Islands. Then followed a period of many months of military occupation, with considerable civil turmoil being also present as a natural aftermath of the conflict.

Prior to the requisition and destruction of its San Fernando and La Paz installations by USAFFE personnel, petitioner had complete and accurate records of all that it owned and possessed at these locations. However, as an expectable concomitant of war all local records and files, along with the various Army requisition documents and agreements between petitioner and USAFFE for the sale and delivery of certain petroleum supplies, equipment and property to USAFFE, were either destroyed, lost or taken by the invading forces, and for that reason it became impossible at that time for petitioner to ascertain the existence of its claim against the United States or the extent thereof. Indeed, for several months prior to mid-December, 1941, communications between petitioner's staff in the Philippines and its home office were greatly curtailed, and shortly thereafter even such limited communications were shut off.

Furthermore, as was pointed out to the court below, the only persons who would have known of the requisition by USAFFE of petitioner's properties, and who would have been sufficiently informed as to the extent of this requisition in the absence of documentary material in respect thereof, were employees of petitioner working at its San Fernando

and La Paz installations. These men, by virtue of their connection with the installations, would have been in a position to speak with reasonable accuracy in connection with the properties and stocks on hand when USAFFE took control of, and ultimately destroyed, the premises. And fortified with the information possessed by these men, petitioner could have presented seasonably its petition to the Court of Claims. Unfortunately, these employees were either killed by the invading forces or placed in concentration camps for the period of the Japanese occupation of the Philippine Islands, facts which will, of course, be developed fully on the trial of this case, but facts which this Court is now urged to notice judicially in light of the general knowledge surrounding Japanese methods of incarcerating, or otherwise disposing of, civilians remaining in the Islands after the Japanese invasion.

Hostilities were terminated in 1945, but many months passed before the chaos and confusion of the war and its aftermath began to subside. When, during 1946, petitioner was permitted to send a skeleton staff to the Philippines, that staff faced the tremendous task not only of physically reconstructing its installations in order to supply, in the first instance, the American occupation forces and essential civilian needs, but also of ascertaining all the facts bearing on the loss of its pre-war properties. Little by little the facts were pieced together, but the process of investigation has continued even to the present date.

Petitioner recognized that in the normal course of events claims against the United States had to be prosecuted within the six-year period established under Section 156 of the Judicial Code. In order to avoid any question as to the bar of this statute, petitioner filed its original petition with the Court of Claims on December 5, 1947, stating therein as completely as was then possible its overall claim

against the United States for properties in the Philippine Islands requisitioned during the war. However, even that information as set forth in the petition was not satisfactory to respondent, for on December 26, 1947, it filed a motion for an order requiring petitioner to make its petition more definite and certain in numerous respects. During the time allowed petitioner within which to determine whether to make objection to respondent's motion, additional information in respect of other installations and supplies requisitioned by the United States was uncovered, and as a consequence a stipulation was filed whereby petitioner consented to the granting of respondent's motion and agreed to file an amended petition on or before March 22, 1948. On March 22, 1948, petitioner moved before the Court of Claims for leave to file its amended petition, and on March 24, 1948, this motion was granted and the amended petition filed.

The amended petition changed petitioner's demand for compensation in respect of its San Fernando installation from one for a small quantity of gasoline of a value of $559.64 to one embracing all petroleum products, supplies, buildings and equipment at that location. The amended petition also added a new demand for compensation, based on the USAFFE requisition of petitioner's petroleum products, supplies, buildings and equipment located at La Paz. Respondent filed its motion to dismiss this amended petition both in respect of the additional compensation sought for USAFFE requisition at San Fernando and in respect of the demand for compensation based on the requisition of petroleum products at La Paz, the motion to dismiss being based upon a strict application of the six-year statute of limitations. After petitioner had obtained leave from the Court of Claims to file a second amended petition, for the sole purpose of correcting certain typographical errors appearing in its amended petition, respondent's motion to dismiss was

allowed to stand against the second amended petition and, after argument thereon, was granted by a divided court.

In holding the statute of limitations to be a good defense to petitioner's demand for compensation in respect of its San Fernando and La Paz installations, the Court of Claims decided that (R. 63):

> "In view of this language employed by Congress, and the circumstances of this case, * * * the running of the statute should [not] be tolled as to the claims of the plaintiff against which the motion to dismiss has been directed."

Chief Judge Jones dissented from the opinion of the Court, and in an opinion rejecting the conclusions reached by the majority, he wrote as follows (R. 63):

> "In the circumstances as disclosed by the pleadings and in the light of conditions that were known to prevail I would overrule the motion to dismiss.
>
> * * * * * * *
>
> "Statutes of limitation are intended to bring disputes to an issue while information, records and living witnesses are available. But here the shoe is on the other foot. Every reason upon which statutes of limitation are based is on the other side and calls for a suspension of the statutes during a period when there was a blackout of information and facts. *Hanger* v. *Abbott*, 6 Wall. 532; *Braun* v. *Sauerwein*, 10 Wall. 218; *Osbourne* v. *United States*, 164 F. (2d) 767, 769."

## Statute Involved [2]

In dismissing parts of the Seventh and Fifteenth Claims stated in petitioner's second amended petition, the Court

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[2] After the argument and submission on June 1, 1948, of respondent's motion to dismiss, Section 156 of the Judicial Code was amended and consolidated with Sections 250(2) and 250a thereof to form Title 28, United States Code, Section 2501.

of Claims of the United States invoked the six year limitation-of-action provisions of Section 156 of the Judicial Code (28 U. S. C. § 262). The relevant parts of that Section are as follows:

> "Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court * * * within six years after the claim first accrues. The claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court * * * within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively."

## Jurisdiction to Review

Jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1255(1), 1651(a) and 2101(c). The judgment of the Court of Claims of the United States was entered on November 1, 1948 (R. 64).

## The Question Presented

Whether the running of the statute of limitations, applicable to a claim against the United States cognizable by the Court of Claims in respect of compensation for property taken by the United States for military purposes in time of war, is suspended during the period of enemy occupation of the situs of the property by reason of which the claimant was deprived completely of access to information bearing on the existence of the claim.

**Reason Relied On for Allowance of the Writ**

In holding the six year limitation-of-action provisions of Section 156 of the Judicial Code applicable under the circumstances presented by this record, the Court of Claims of the United States decided an important question of federal law which has not been, but should be, settled by this Court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the Court of Claims of the United States, sitting at Washington, D. C., commanding said Court of Claims to certify and send up to this Court, on a date to be designated, a full and complete transcript of the record of all proceedings in said Court of Claims heretofore had in this case, to the end that this case may be reviewed and determined by this Court; that the judgment of said Court of Claims be reversed; and that your petitioner be granted such other and further relief as may seem proper.

STANDARD-VACUUM OIL COMPANY,
*Petitioner,*

By ALBERT R. CONNELLY,
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GEORGE S. COLLINS,
ALLEN F. MAULSBY,
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January 28, 1949.

## BRIEF IN SUPPORT OF PETITION

### Opinion of the Court Below

The opinion of the Court of Claims of the United States, handed down on November 1, 1948 (R. 59-63), has not yet been reported in Federal Supplement.

## ARGUMENT

**The running of the Statute of Limitations was suspended during the period of war and enemy occupation.**

Although the majority opinion of the Court of Claims has taken the view that the language of the applicable statute of limitation, together with the circumstances of the case, precludes an assertion of petitioner's claim for property requisitioned at its San Fernando and La Paz installations, nevertheless, the Court indicates a complete awareness (R. 60-61) of the now-established principle that causes other than those set forth with particularity in the statute itself will have the effect of suspending the running of the statute. This principle was given an extended exposition by this Court in the early case of *Braun* v. *Sauerwein*, 10 Wall. 218 (U. S. 1871), in which a Maryland statute of limitation was pleaded as against a claim for money alleged to have been illegally exacted by the Collector of Internal Revenue. Mr. Justice Strong, writing for a unanimous Court, discussed at length certain judicial exceptions to the prescribed period of limitation and concluded (p. 223):

> "It seems, therefore, to be established, that the running of a statute of limitation may be suspended by causes not mentioned in the statute itself. • • •"

Perhaps the important authoritative case in this country upon the subject is *Hanger* v. *Abbott*, 6 Wall. 532 (U. S.

1867), to which reference was made by this Court in the *Braun* case and which held squarely that a state of war had the effect of suspending the running of the statute.

In the *Hanger* case, Abbott of New Hampshire sued Hanger of Arkansas in *assumpsit*. The question was whether the period of the War between the States was to be excluded in computing the time fixed for limitation of action by the Arkansas statute, there being no exception or exemption stated in the statute. Mr. Justice Clifford gave the opinion of the Court and held that the statute of limitations did not run while the creditor was incapable of suing, owing to the state of war.

Subsequent decisions, both state and federal, have with rare exception been in accord with this doctrine,[3] nor is it difficult to account for this unanimity of opinion. The courts of the United States are sensitive to the rights of litigants and sedulous in their protection. Accordingly, when the vicissitudes of war impose disabilities for which a litigant is in no way responsible, courts proceed upon the principle that the period of that disability, even though not specifically provided for in the statute, must be deducted in computing the time within which suit is allowed to be commenced.

It is fair to point out that a number of the cases holding that war suspends the running of the statute were actions between citizens of the belligerent nations, the opinion in

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[3] *The Protector*, 9 Wall. 687 (U. S. 1869); *Brown* v. *Hiatts*, 15 Wall. 177 (U. S. 1873); *First Nat. Bank* v. *Anglo-Oesterreichische Bank*, 37 F. (2d) 564 (C. C. A. 3d, 1930); *Maryland Casualty Co.* v. *Vidigoj*, 270 S. W. 472 (Ky. 1925) (recognizing the general rule and pointing out that a specific statute to the same effect was controlling); *Wirtele* v. *Grand Lodge, A. O. U. W.*, 196 N. W. 510 (Neb. 1923) (as applied to a United States citizen resident in a belligerent nation during the first World War); *Farenholtz* v. *Meinshausen*, 168 N. Y. Supp. 869 (1st Dep't, 1918). See *Sands* v. *N. Y. L. Ins. Co.*, 50 N. Y. 626 (1872) (wherein the court by way of dictum stated that war extends the statute of limitations). *Cf.* RESTATEMENT, PROPERTY, § 221(1)(d).

those cases going off on the theory that the courts of either belligerent nation were necessarily closed to the citizens of the other. *Cf. Hanger* v. *Abbott*, 6 Wall. 532 (U. S. 1868); *Brown* v. *Hiatts*, 15 Wall. 177 (U. S. 1873).[4] Yet in applying this principle to the War between the States, the reported cases have also held the statute suspended in actions between citizens of different states of the Confederate States, *i.e.*, between citizens of the same belligerent. *Adger* v. *Alston*, 15 Wall. 555 (U. S. 1873); *Batesville Institute* v. *Kauffman*, 18 Wall. 151 (U. S. 1873); *Ross* v. *Jones*, 22 Wall. 576 (U. S. 1875). However, only infrequently have courts in this country been called upon to decide whether the running of the statute is suspended as between the United States and a non-belligerent by virtue of the occupation of the non-belligerent nation by the military forces of a nation with whom the United States was at war, although if such be true, then *a fortiori* the running of the statute would be suspended as between the United States and its own citizens in respect of the occupation and control by the belligerent over the property owned by the United States citizen.

Some cases have held either directly or by implication that an occupation by a belligerent nation of the property of a non-belligerent has the effect of tolling the statute. *Steaua Romana Societate, etc.* v. *Woodman*, 2 F. Supp. 303 (E. D. Pa. 1931), *rev'd on stip. of parties*, 61 F. (2d) 1047 (C. C. A. 3d, 1932); *Wirtele* v. *Grand Lodge A. O. U. W.*, 196 N. W. 510 (Neb. 1923); *Colorado Fuel & Iron Co.* v. *Industrial Commission*, 216 Pac. 706 (Colo. 1923). See Colombos, *Law of Prize*, § 44. However, it was because

[4] With the exception of Louisiana, the rule of law presently under discussion, suspending during war the operation of a limitation-of-action statute, was recognized and applied to the War between the States, and in consequence thereof statutes of limitation were suspended as between citizens of the Confederate States and citizens of those states which remained loyal to the Union.

of the doubt surrounding this question that the Acting Secretary of State wrote, in answer to an inquiry of the Belgin Minister made during the First World War, that the question whether, although the Government of the United States was not at war with Belgium, the statute of limitations in the United States would be suspended, in view of the occupation of Belgium by German military forces, was "one which, in the absence of special legislation on the subject or an agreement on the part of the Governments concerned, can finally be determined only by the decision of a competent judicial tribunal". See MS. Department of State, file 855.51/33, the Acting Secretary of State (Polk) to the Belgian Minister (De Cartier), no. 84, July 20, 1918. Yet in spite of the relative darkness in this corner of our case law, we submit that the state of war existing between the United States and the Japanese Empire, together with the Japanese occupation of the Philippine Islands from December, 1941, to February, 1945, had the effect of suspending the running of the statute of limitations upon petitioner's claim against the United States for property taken from it and used or destroyed by the United States Armed Forces of the Far East. Upon the principle decided in the earlier cases and adhered to in subsequent decisions—that the statute of limitations can not run when a state of war prevents the doing of the acts necessary to prevent its running—this contention seems eminently justified.

The most recent case dealing with this principle is *Osbourne* v. *United States*, 164 F. (2d) 767 (C. C. A. 2d, 1947). In the *Osbourne* case appellant, the libellant in the court below, had been employed between October 15, 1941, and December 8, 1941, as a member of the crew of a vessel owned, operated and controlled by respondents American President Lines, Ltd., and the United States, through its agency the War Shipping Administration. At some time

during the period of his employment appellant was injured through the negligence of respondents. On December 8, 1941, he (along with the rest of the crew) was interned by members of the armed forces of the Imperial Japanese Government and was not returned to this country until October of 1945. Suit was commenced on July 31, 1946.

The District Court dismissed the libel on exceptions founded on the statute of limitations, *Osbourne* v. *United States*, 74 F. Supp. 711 (S. D. N. Y. 1947), stating that (p. 712):

> "It is with reluctance that I have come to the above conclusion but I see no way to avoid it. Libelent was late in starting his action because he was denied access to the Courts through no fault of his.
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> • • • • • • •
>
> "Notwithstanding all this I can find no authority in law for reviving this claim which died because of the failure to prosecute in time. I cannot put into the law something which is not there. The remedy lies with the legislature."

On appeal to what is now the United States Court of Appeals for the Second Circuit, the order of the District Court was unanimously reversed in an opinion by Judge Jerome Frank, concurred in by Judges Learned Hand and Augustus N. Hand. That Court based on its conclusion on the reasoning of this Court in the *Braun* and *Hanger* cases, discussed *supra* at pp. 9-10, and held that the running of the statute of limitations was suspended under the circumstances before it for consideration.

It is now, of course, well settled that in suits between citizens of different belligerent nations, the running of the statute is suspended during the period of hostilities. See, e.g., *Hanger* v. *Abbott*, 6 Wall. 532 (U. S. 1868); *Brown* v. *Hiatts*, 15 Wall. 177 (U. S. 1873). This rule is based on

the fact that the immediate and necessary consequence of a declaration of war is to prohibit intercourse or dealings between citizens of the belligerent states or nations; and if the running of the statute were not suspended, and if the period of war were of sufficient duration, proper claimants in the one belligerent would be denied completely the right to enforce their just claims against citizens of the other belligerent. It follows, therefore, that this rule is based upon principles of justice and fairness, and it is in accordance with these principles that the strict common-law rule has been relaxed. See *Siplyak* v. *Davis*, 119 Atl. 745 (Pa. 1923).

With this in mind, we revert to the problem with which petitioner was faced during the period of the war and the Japanese occupation of the Philippines. Since the only persons who knew the facts upon which a claim could be based were either killed or interned by the Japanese, petitioner was not aware of the existence of any claim it might have had until after the Philippines had been liberated. Therefore, during the period of occupation, petitioner was just as effectively denied access to the courts as if it had been a natural person who had been imprisoned by the Japanese. If the statute of limitations was not suspended under these circumstances, and if the war conditions had lasted long enough, the right of petitioner to just compensation for its requisitioned properties would have been barred even before any suit could have been instituted. It is entirely fortuitous that, in this case, the Japanese occupation of the Philippines lasted only approximately three and a half years, and that petitioner was able to file its original petition within the six-year period specified by the statute. We submit, however, that under the circumstances petitioner should not be bound by a strict application of the statute in respect of the additional demands set forth in its

amended petition and restated in its second amended petition.

If the statute of limitations is not suspended during the period of war and enemy occupation, another anomalous result would necessarily follow. Under the principles heretofore considered, it is possible for a Japanese citizen to assert against the Government of the United States a claim upon which the statute of limitations has run, without fear of having his claim dismissed because it was not seasonably filed. If the Government should interpose the defense of the statute of limitations, such a claimant could invoke, and rightly, the rule that the statute was tolled during the period of war between Japan and the United States. Yet under the decision of the Court of Claims, a citizen of the United States can be denied the right to reimbursement for property taken from him by the United States Army for use in the prosecution of the same war, and such denial can be upheld on the ground that the statute had run its course during a period when, because of the war, the claimant did not have, and during a period when it was impossible for him to obtain, the information upon which alone suit for such reimbursement could be based. Such would be an incredibly harsh rule for this, or any, Court to adopt, more especially since it would extend to a Japanese citizen a right which under similar circumstances would be denied a citizen of the United States. Such a rule would be particularly unconscionable where, as here, the disability to sue on the part of the United States citizen grew out of the Japanese occupation of American-owned property.

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[5] The rule suspending the running of the statute during war is applicable irrespective of whether the limitation in the particular statute of limitations is considered to be a limitation of the right or liability, or of the remedy. *Borovitz* v. *American Hard Rubber Co.*, 287 Fed. 368 (N. D. Ohio 1923); *Colorado Fuel & Iron Co.* v. *Industrial Commission*, 216 Pac. 706 (Colo. 1923); *Siplyak* v. *Davis*, 119 Atl. 745 (Pa. 1923).

The majority opinion of the Court of Claims makes specific reference to many of the decisions discussed above but concludes that "In view of [the] language employed by Congress, and the circumstances of this case, we do not think that the running of the statute should be tolled * * *". (R. 63.) It has already been shown that the running of the statute may be suspended by causes not set forth in the statute itself. See *Braun* v. *Sauerwein, supra,* at p. 9. With reference to the "circumstances of the case," the statements made herein, and in the foregoing petition to this Court for a writ of certiorari, demonstrate all too clearly the insurmountable difficulties with which petitioner was burdened and the diligence with which petitioner acted, in spite of these difficulties, in attempting to apprise respondent of its claim for properties requisitioned in the Philippine Islands by representatives of the United States Armed Forces of the Far East during World War II.[6]

It is submitted that the dissenting opinion of Chief Judge Jones (R. 63) approaches this record with considerable judicial objectivity and that

> "* * * to grant the motion on the cold letter of the law without knowing what the justifying facts may be is too much like making plaintiff [petitioner] responsible for conditions brought about by a conflict that was not of its choosing, and penalizing it for a failure to secure facts during a period when they were unavailable."

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[6] The majority opinion of the Court of Claims observes that petitioner filed a number of claims for property requisitioned in the Philippines by USAFFE, with the United States Army Claims Service, an organization set up for the purpose of dealing with just such claims against the United States. What the Court failed to observe in its opinion, even though the point was stressed on oral argument under questioning from the Bench, is that no claim was ever presented to the Army Claims Service in connection with the specific property considered in the Court's opinion, this for the reason that petitioner was not at that time aware of the existence of any such claim.

A similar thought, and one equally applicable to the circumstances of this case, was voiced by this Court in *Braun* v. *Sauerwein* [10 Wall. 218, 222 (U. S. 1870)] when Mr. Justice Strong said, in holding the statute of limitations suspended while the plaintiff was prevented from suing by an Act of Congress:

> "* * * none of the reasons which induced the enactment of these statutes [of limitations] apply to [this] case; * * *."

## Conclusion

It is respectfully submitted that this case calls for the exercise of supervisory powers by this Court and that the writ should be allowed.

Respectfully submitted,

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January 28, 1949.